

Editor's note: Appealed -- aff'd, Civ. No. 4-72-10 (D. Idaho Nov. 3, 1972), aff'd, No. 73-1150 (9th Cir. Sept. 20, 1974)

UTAH POWER & LIGHT COMPANY

IBLA 72-73

Decided November 5, 1971

Rights-of-Way: Act of March 4, 1911 -- Power: Transmission Lines

An applicant for a transmission line right-of-way under the Act of March 4, 1911, is properly required to accept the stipulation imposed by the Department's regulations permitting the Department to utilize surplus capacity in the line or to increase the line for the transmission of power by the Department.

UTAH POWER & LIGHT COMPANY : Right-of-way allowed
: subject to conditions

: Affirmed

DECISION

Utah Power & Light Company has appealed from a decision dated March 27, 1970, in which the Idaho state office, Bureau of Land Management, required the company to pay advance rental and to accept the wheeling stipulation provided by 43 CFR 2234.4-1(c)(5) 1/ and other stipulations relating to protection of the surficial resources, as conditions precedent to granting right-of-way, I 3341, pursuant to the Act of March 4, 1911, 43 U.S.C. § 961 (1970) for the Dubois Substation 69-kv electric power transmission line across public lands of the United States.

The record shows that advance permission to construct was given on March 4, 1970, pending appraisal and receipt of report from Bonneville Power Administration, the Federal power marketing agency for this area. Following promulgation of the decision of March 27, 1970, the company was granted several extensions of time to comply with the requirements set forth in the decision, with July 31, 1971, being the ultimate date allowed. On July 23, 1971, the company filed notice of appeal.

At the time the state office decision was issued, the pertinent regulation, 43 CFR 1842.4, provided that a notice of appeal to the Director, Bureau of Land Management, must be filed in the office making the decision within 30 days after service of the decision on the person taking the appeal. 2/

1/ This regulation is now codified under 43 CFR 285.1-1(a)(5) (1971).

2/ Reorganization of the appellate procedures within the Department of the Interior, effective July 1, 1970, eliminated appeals to the Director, Bureau of Land Management, and established the Board of Land Appeals to decide all appeals relating to use and disposal of the public lands and their resources (211 DM 13.5; 35 F.R. 12081). The regulation relating to mandatory time limit for filing a notice of appeal is now codified as 43 CFR 4.411 (a), 36 F.R. 7200.

Although there is authority for the State Director to extend the time for compliance with his decision, there is no provision in any regulation authorizing him to extend the time for filing a notice of appeal from his decision. The decision of March 27, 1970, was served on the company on March 30, 1970. The thirtieth day thereafter was April 29, 1970. If the decision of March 27, 1970, was the final decision any notice of appeal relating to it, filed after April 29, 1970, was subject to summary dismissal as provided by 43 CFR 1840.0-7, now codified as 43 CFR 4.411(b), 36 F.R. 7200.

The Idaho state office in letters dated July 27 and August 12, 1971, informed the appellant that its attempt to appeal came too late.

The appellant, however, contends that the appeal period did not begin to run until the last extension for compliance had elapsed. Since it filed its appeal within 30 days of that date it says that its appeal was timely.

We pass over this procedural point since we find the imposition of the wheeling stipulation is proper in any event.

The company contends that the wheeling stipulation is void as not being within the authority of the Secretary of the Interior, as being an unreasonable exercise of administrative discretion, and as being contrary to the United States Constitution in that it deprives the company of its property without due process. The Department heretofore has considered and rejected the arguments presented by this appellant in Southern California Edison Company, 71 I.D. 405 (1964). In Idaho Power Company, A-30294 (March 4, 1965), and Southern California Edison Company, A-30377 (June 11, 1965), the Department sustained the validity of the wheeling stipulation and the requirement that applicants for electric power transmission line rights-of-way execute the stipulation relating thereto, but modified the stipulation so as not to foreclose the right of the right-of-way grantee to contest the validity of the regulation. In the case at bar, Utah Power & Light Company was called upon to execute the amended stipulation first allowed in Idaho Power Company, *supra*. This Board finds no reason to disturb the Department's previous ruling in Southern California Edison Company, *supra*, as modified in Idaho Power Company, *supra*. The amended stipulation, when executed, permits the appellant to obtain judicial review of the constitutional issues it has raised.

Utah Power & Light Company may not maintain its Dubois Substation 69-kv line over public domain lands of the United States unless it accepts the stipulations required by the Idaho state office decision of March 27, 1970.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the decision below is affirmed.

Edward W. Stuebing, Member

We concur:

Martin Ritvo, Member

Frederick Fishman, Member

